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In the Supreme Court of the United States

OCTOBER TERM, 1967.

No. 1097.

EVANS REAMER & MACHINE COMPANY,

Petitioner,

vs.

THE UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS.

REPLY TO RESPONDENT'S MEMORANDUM.

RICHARD F. STEVENS,
1950 Union Commerce Building,
Cleveland, Ohio,
Attorney for Petitioner.

Of Counsel:
VICTOR STRIMBU, JR.

THE GATES LEGAL PUBLISHING CO., CLEVELAND, OHIO—TEL. (216) 621-5647

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Petitioner's Application for a Writ of Certiorari was filed ninety-two (92) days after the entry of the decree of the Court of Claims. The late filing was caused by an error in the computation of the time period within which a petition for a writ of certiorari should be filed.

The Petitioner respectfully requests that its application for a writ of certiorari not be summarily denied but rather considered on its merits. Petitioner submits that this Court can consider the Petition on its merits if it chooses to do so.

Prior to September 1, 1948, Title 28, U. S. C. § 350 (c) provided as follows:

> "No appeal, or writ of certiorari intended to bring any judgment or decree before the Supreme Court for review shall be *allowed or entertained* unless application therefor be duly made within three

> months after the entry of such judgment or decree excepting that writ of certiorari to the Supreme Court of the Philippine Islands may be granted where application therefor is made within six months. For good cause shown either of such periods for applying for a writ of certiorari may be extended not exceeding 60 days by a justice of the Supreme Court." (Emphasis added.)

Section 2101(c) of Title 28, effective September 1, 1948, provides:

> "Any other appeal or any written certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within 90 days after the entry of such judgment or decree. A justice of the Supreme Court, for good cause shown, may extend the time for applying for a writ of certiorari for a period not exceeding 60 days."

It is, of course, apparent that Congress deleted the express prohibition against allowing or entertaining an application for a writ unless it was filed within the designated time period. Congress did not delete the sentence which gives a Justice of the Supreme Court the right to extend the time for applying for a writ of certiorari for a period not exceeding sixty (60) days. Congress, in deleting the express prohibition against allowing or entertaining a petition for a writ of certiorari filed after the designated time period has expired, has left the question of whether such a petition should be allowed or entertained to the discretion of this Court.

Admittedly, Petitioner has filed its application two (2) days late. However, the record in this case was in the Supreme Court well before the time period had expired. Respondent was aware that Petitioner had taken the first steps toward applying for a writ of certiorari

within the time period allotted, and the late filing of the Petition has caused no delay in the Supreme Court's consideration of this case. To summarily dismiss Petitioner's application without considering it on its merits as Respondent has requested is not required by law. When weighing the impact of summary dismissal of Petitioner's application against the fact that consideration of said application on its merits will cause no inconvenience to the Court or to Respondent, Petitioner submits that, in light of the substantial questions of law raised in said application, the application should be considered on its merits. Petitioner, in effect, is requesting the Court to exercise the discretion granted it by Congress and to allow Petitioner a two (2) day extension of time for the filing of its application so that the Petition may be considered on its merits.

Respondent's Memorandum in Opposition correctly points out Petitioner's late filing, but then requests that the Petition be dismissed. Rule 24(2) of the Rules of the Supreme Court states that no motion by a respondent to dismiss a petition for a writ of certiorari will be received.

Petitioner respectfully requests that Respondent's request for dismissal of Petitioner's application for a writ of certiorari be denied and that this Court consider said application on its merits.

Respectfully submitted,

RICHARD F. STEVENS,
Attorney for Petitioner.

Of Counsel:
VICTOR STRIMBU, JR.